

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

WENCESLAO HERNANDEZ

Claimant

VS.

MONFORT, INC.

Respondent

Self-Insured

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Docket No. 208,012

ORDER

Respondent appeals the November 17, 1999, post award Amended Order of Administrative Law Judge Pamela J. Fuller. The Order required respondent to write separate checks in the above award, one to the claimant and one to the claimant's attorney. The Order further assessed the costs of claimant's attorney fee dispute hearing to respondent. The assessment of the costs of that hearing is the only issue before the Appeals Board. Oral argument before the Board was held on May 3, 2000.

APPEARANCES

Claimant appeared by his attorney, Michael L. Snider of Wichita, Kansas. Respondent appeared by its attorney, Terry J. Malone of Dodge City, Kansas.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Having reviewed the evidentiary record filed herein, the Appeals Board finds as follows:

Claimant suffered accidental injury while working for respondent beginning in August 1995 and continuing through May 17, 1996. In March 1998, respondent attempted to settle this matter, offering claimant a lump sum payment of \$30,000 to settle all issues in his workers' compensation case, with the additional stipulation that claimant's employment with respondent would voluntarily end. Claimant conferred with his attorney and elected to reject this offer.

At the hearing on November 15, 1999, claimant testified that claimant did not want to give up his job with respondent. Claimant also inferred that his attorney advised him that his award could ultimately be worth more money than was offered.

The Award issued by Administrative Law Judge Fuller on October 5, 1998, was for \$9,345.28, which represented a 16 percent loss of use of the right arm. This matter was appealed to the Workers Compensation Board, and affirmed by the Board's decision of August 18, 1999.

After the appeal time had run, respondent issued a check made jointly payable to claimant and his attorney for the amount of the award. However, claimant refused to endorse the check, being upset over the amount of the award. Claimant's attorney then requested a hearing in front of the Administrative Law Judge to resolve that dispute. Respondent was provided notice of the hearing, but advised the Administrative Law Judge that it would not attend, as it was not involved in the dispute. The Administrative Law Judge, however, requested that respondent's attorney attend, as there was a possibility she might request that the respondent issue separate checks to claimant and his attorney. At the end of the hearing, the Administrative Law Judge did order separate checks payable to the claimant and to his attorney. The cost of the hearing resolving the dispute between claimant and his attorney was then assessed to respondent. Respondent objected, arguing that it was not involved in the dispute between claimant and claimant's attorney. It further stated that the conflict was created by claimant's refusal to accept the small award.

Claimant did testify at the hearing that the representation provided by his attorney was, at all times, adequate and that he had no complaints about his attorney during the three and a half years that they were in litigation.

In reviewing the evidence, the Appeals Board finds that the dispute from the November 15, 1999, hearing centered solely around the claimant's unwillingness to endorse the check provided by respondent due to claimant's dissatisfaction with the amount of the award. Respondent had no involvement in the dispute. It was a disagreement between claimant and his attorney, instigated by claimant.

K.S.A. 44-555 allows the assessment of all or part of a shorthand reporter's fees to any party to the proceedings for compensation. In this instance, the Appeals Board finds the fees should be assessed against the claimant. The dispute arose around claimant's dissatisfaction with the award, not with his representation or any other issue associated with the litigation of his claim. Claimant acknowledged that the representation provided by his attorney was, at all times, adequate.

The attachments to the hearing transcript show that it was claimant's decision to accept or reject the original \$30,000 offer. Claimant's dissatisfaction with the lower award

is understandable, but it does not change the contractual obligations between claimant and his attorney in this matter. The Appeals Board finds that the court reporter's fee should be assessed against the claimant, pursuant to K.S.A. 44-555.

The Appeals Board also notes, however, under K.S.A. 44-552, transcripts of proceedings before administrative law judges are not automatically required in every case. In this instance, a more appropriate procedure might have been to delay transcription of the hearing until such time as a need for it arose.

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Amended Order of Administrative Law Judge Pamela J. Fuller dated November 17, 1999, should be, and is hereby, reversed with regard to the assessment of the costs of the hearing, with those costs now being assessed against the claimant. The Order is affirmed in all other regards.

IT IS SO ORDERED.

Dated this ____ day of May 2000.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

DISSENT

I respectfully disagree with the majority's opinion and would affirm the Administrative Law Judge. First, the claimant did not request a transcript be prepared. Second, the respondent's interests were affected to such extent that it was not unreasonable to require respondent to bear the transcript cost.

BOARD MEMBER

c: Michael L. Snider, Wichita, KS
Terry J. Malone, Dodge City, KS
Pamela J. Fuller, Administrative Law Judge
Philip S. Harness, Director